302/06
Filed on 14/7/06
by Shri Nyelb Manj
Advocate
14/7/06
R to D.R. (J)

(4)

(1)

Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR: CHHATTISGARH

CRIMINAL APPEAL NO. 256 OF 2006

APPELLANT (IN JAIL)	Nirmal @ Niranjan S/o Libra Nagesia, aged about 30 years, R/o Babuparas, Ambikapur, Distt. Sarguja (CG)
Versus	
RESPONDENT	State of Chhattisgarh through the Station House Officer, P.S. Ambikapur, Distt. Sarguja (CG)

CRIMILAL APPEAL UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE, 1973

...passed by Shri A.S.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 656/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI V.K. SHRIVASTAVA &
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

30-10-2006

Ku. Sharmila Singhai, counsel for the appellant.

Shri U.N.S. Deo, Addl. Public Prosecutor. with Shri D.C. Pandey, Panel Lawyer, for the State.

Heard on M.(Cr.)P. No. 1820/2006, I.A. No. 2341/2006 and I.A. No. 2328/2006.

The above applications are not opposed.

Taking into consideration the reasons assigned in the applications, M.(Cr.)P. No. 1820/2006, I.A. No. 2341/2006 and I.A. No. 2328/2006 are allowed.

Heard on admission.

Admit.

Record of the trial Court has already been received.

Learned counsel for both the parties submit and pray that vide judgment dated 3-4-2006 passed in Cr.A. No. 2061/1999, this Court has already recorded a finding in favour of the appellant Nirmal that there is no evidence to connect him with the crime, therefore, this appeal may kindly be heard finally and decided. Taking into consideration the submission made by both the parties, the prayer is allowed.

Heard finally.

Judgment dictated on Dias

Per Vijay Kumar Shrivastava, J.

By this appeal under Section 374 (2) of the Code of Criminal Procedure, appellant Nirmal @ Niranjan has questioned legality and correctness of the

P.T.O.

(27)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 656/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

judgment of conviction and order of sentence dated 20th November, 1998, passed by the Sessions Judge, Surguja (Ambikapur), in Sessions Trial No. 59/96, whereby learned Sessions Judge after holding the appellant along with one Sitaram guilty for commission of offence punishable under Section 302 of the Indian Penal Code, sentenced him to undergo imprisonment for life and fine with default stipulation.

The case of the prosecution, in brief, is that Nitesh Kumar Gupta lodged the First Information Report in Police Station, Ambikapur on 30th November, 1995, to the effect that on that day at about 7 p.m. when he was at his residence, Sitaram and Nirmal Nagesia came to his house from Darripara side, his father was also at residence, they enquired about liquor and thereafter left towards western side of the pond. After some time, he heard the rattling noise of rickshaw which was going towards old brick kiln, he thought that they might have forgotten the way, therefore, he went to show them the way. From some distance, he saw that they were lifting body of a person from the rickshaw and taking the body towards the pit of brick kiln. They started talking that whether they should leave the body there or somewhere else. He came back to his house and apprised his father and persons of the vicinity about the incident on which all of them went, they saw naked body of a person having blood stains on face of it was lying and Nirmal and Sitaram both were sitting there.

Receiving this report, the Station House Officer, Police Station, Ambikapur, registered the F.I.R., left for the scene of occurrence and took into possession blood stained soil, plain soil, one nylon socks and one handkerchief from the place of occurrence. He also took into possession from Sitaram, one yellow colour sweater, one underwear, one full pant of Leo make and one Baniyan. One

T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 656/2006 ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sweater was taken into possession from Nirmai. . The dead body after inquest was sent for post-mortem to the District Hospital, where Dr. B.S. Sengar conducted post-mortem and prepared the post-mortem report. Statements of witnesses have been recorded under Section 161 of the Cr.P.C.

After completion of investigation, charge sheet was led in the Court of Chief Judicial Magistrate, Ambikapur, who committed the case to the Court of Session, for trial.

Charge under Section 302 read with Section 34 of the I.P.C. and 201 read with Section 34 of the I.P.C. has been framed against the appellant. Charge has been read over and explained to him, who abjured the guilt. His defence was that he is innocent and has been falsely implicated in the case. Learned Sessions Judge after appreciating evidence on record, convicted and sentenced the appellant for committing offence punishable under Section 302 of the I.P.C., however appellant has been acquitted of charge under Section 201 of the I.P.C.

Homicidal death is not in dispute. Even otherwise from the statement of Dr. B.S. Sengar (P.W. 3) and autopsy report Ex. P-3, it has been established that the deceased received following 12 injuries and succumbed to those. His death was homicidal in nature.

(1) Lacerated wound over right side to chin size 4 x 2 cm, obliquely downwards and anteriorly with fracture mandible at the same site;

(2) Contusion over right maxillary process. size 4 x 4 cm;

(3) Contusion over the bridge of the nose $\frac{1}{2} \times \frac{1}{2}$ cm,

(4) Contusion over clavicle right size 4 x 4 cm with underlying fractured clavicle at mid 1/3rd;

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. No. 656/2006

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(5) Lacerated wound over chin on left side 2 x 2 cm bone deep;

(6) Multiple scattered abrasions and contusions over the neck anterior aspect extending from thyroid cartilage to the clavicle left more marked and deep on left side with subcut Hematoma upto trachea;

(7) Multiple scattered abrasions over the back side mid sacral and gluteal region in full width;

(8) Linier abrasion of 6 x ½ cm. right to umbilicus transversely arranged;

(9) Abrasion over right greater prochanter size 2 x 2 cm;

(10) Abrasion over right anterior superior iliac spine 2 x 2 cm;

(11) Three abrasions over medial aspect of arm right, 1 x 1 cm each situated in mid ½ portion;

(12) Abrasion over medial aspect of wrist right 4 x 4 cm.

Heera Singh (P.W. 1), Vijay Prasad Gupta (P.W. 4), Hansuram (P.W. 5), Kanhaiya (P.W. 6) and Nitesh Kumar Gupta (P.W. 8), all these witnesses have been declared hostile by the prosecution and they did not depose against the appellant. As per statement of N.P. Upadhyay (P.W. 9), one full sleeves sweater was seized from the possession of the appellant but that sweater belongs to the deceased has not been established by identification parade or otherwise. No evidence to establish identity of dead body has been adduced. Khemraj (P.W. 10) a Police Constable when reached the place of occurrence, he found appellant and other 3-4 persons who were assembled there in normal course.

This Court has already held vide judgment dated 3-4-2006 passed in Cr.A. No. 2061/1999 that the prosecution has not been able to bring on record any

P.T.O.

(30)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr-A-No. 656/2006 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

material to show that in any way, the accused persons carried the body of deceased Shivnath Upadhyay in the rickshaw in question or anybody saw them lifting the body from rickshaw and place the same in the pit near the brick kiln. Even the sweater, which was recovered from accused Nirmal, has not been identified by anybody that same was belonging to the deceased. Therefore, virtually there is no evidence in this case to connect accused/appellant Sitaram and co-accused Nirmal with the crime in question. In the circumstances, finding of the trial Court convicting the accused/appellant cannot be sustained.

In the result, we are of the considered view that there is no evidence to connect the appellant with the crime in question i.e. murder of Shivnath Upadhyay, therefore, the appeal is allowed. The impugned judgment of conviction and order of sentence passed by the trial Court against the appellant is set aside. He is acquitted of the charge under Section 302 of I.P.C. and is directed to be set at liberty forthwith, if not required in any other matter.

Sd/-
V.K.Shrivastava
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P/-